under this section to require the production of audited accounts and balance sheet for the purpose of satisfying himself that the income is correctly stated in the income tax return. Section 61 of the Ordinance gives him the same power and the additional power of requiring the production of any books, documents, accounts and returns as well as personal attendance of the party concerned. This power he is entitled to use if he requires the production of books and personal attendance for the purpose of further verification of the accounts which may have been called for for the purpose of ascertainment of the income tax under section 59(1) of the Ordinance.

For the reasons I have stated above I was of the opinion that the appellant had been rightly served with the notice under section 59(1) of the Ordinance and was therefore rightly convicted of the offence with which he was charged. I therefore dismissed the appeal.

Appeal dismissed.

CALHAEM v. M. S. ALLY & CO. LTD.

[O.C.J. (Gill J.) April 25, 1964]

[K.L. — Civil Suit No. 5 of 1964]

Practice and Procedure — Execution — Judgment obtained in Magistrate's Court — Proceedings by way of garnishment — Proceedings founded on a judgment which was wrongful — Whether a claim in damages lay for the garnishment based on wrongful judgment.

Damages — Wrongful attachment — Whether person wrongfully attached could claim damages — Whether bailiff liable in damages.

The plaintiff brought an action against the defendants for damages for wrongful attachment alleging that the defendants had wrongfully caused a garnishment notice to be served on the manager of the Hongkong & Shanghai Banking Corporation, Kuala Lumpur on September 21, 1963 attaching the monies of the plaintiff in the hands of the said Bank which notice was not withdrawn until October 23, 1963. The plaintiff alleged that the attachment was wrongful in that the judgment in the Magistrate's Court was in fact obtained by the defendants without any service of the summons having been made upon the plaintiff. The judgment in the Magistrate's Court was set aside on November 28, 1963.

The defendants applied to the court by way of summons in chambers for the statement of claim to be struck out on the ground that it disclosed no cause of action because the attachment in the Magistrate's Court was made when there was in existence a valid subsisting judgment and this judgment authorised execution proceedings.

Held: the plaintiff's assertion in his statement of claim that the summons in the Magistrate's Court was not served on him was not refuted by the defendants and on this assertion it was clear that the defendants obtained their judgment in the Magistrate's Court wrongfully if not fraudulently and *prima facie* the plaintiff was entitled to claim damages for attachment founded on that wrongful judgment since the attachment was subsequently withdrawn and the judgment set aside. The application by the defendants should therefore be dismissed.

Observations on liability of bailiff for wrongful attachment.

Cases referred to:—

(1) *Ives* v. *Lucas and Thomson* (1823) 171 E.R. 1079.

(2) *Williams* v. *Williams and Nathan* [1937] 2 All E.R. 559.

APPLICATION.

S. Sothi for the plaintiff.

Peter Mooney for the defendants.

Gill J.: This was an application by the defendants by way of summons in chambers for an order that the statement of claim in the suit be struck out as disclosing no reasonable cause of action and as being frivolous and vexatious and that the action be stayed or dismissed and that the defendants be at liberty to sign judgment for their costs of the defence and of this application as taxed.

The action is for damages for wrongful attachment. The facts of the case as set out in the statement of claim briefly are that on 21st September, 1963 the defendants (as plaintiffs in Kuala Lumpur Magistrate's Court Civil Action No. 66 of 1960) caused a garnishment notice to be served on the manager of Hongkong & Shanghai Banking Corporation, Kuala Lumpur, thereby attaching the monies of the plaintiff (as defendant in the civil action in the Magistrate's Court) in the hands of the said Bank. The garnishment notice was not withdrawn until the 23rd of October, 1963.

It is alleged that the attachment of the plaintiff's money was wrongful in that he was never served with the summons issued by the Magistrate's Court. It is further alleged that the summons was served on some person other than the plaintiff, which person was pointed out to the court process server by the defendants. The judgment in the Magistrate's Court was set aside on 28th November, 1963. The plaintiff claims that as a result of such wrongful attachment he has suffered loss of reputation and has been wrongfully deprived of the use of his monies with the said Bank and has thus suffered damages.

At the hearing of the summons it was argued by Mr. Mooney on behalf of the defendants that the statement of claim disclosed no cause of action, because the attachment in the Magistrate's Court was made when there was in existence a valid subsisting judgment. It was further argued that so long as that judgment subsisted it authorized execution proceedings. In this connection Mr. Mooney cited the old case of *Ives* v. *Lucas and Thomson.*(1) It was decided in that case that as long as a judgment exists, it protects those who seize property under an execution founded on it and that if the judgment and execution are set aside, no action lies against the sheriff for anything he did under it while it

remained in existence. I was also referred to the more recent case of *Williams* v. *Williams and Nathan* [2] on the same point.

Mr. Sothi submitted on behalf of the plaintiff that all the points raised by Mr. Mooney would have to be argued at the trial. A point to be argued at the trial, in his submission, was whether there was a judgment at the time of the execution. In other words, all these points were points of law which could best be argued at the trial after the parties had adduced their evidence.

The application for the statement of claim to be struck out was not supported by an affidavit. I mention this merely to point out that the plaintiff's assertion in his statement of claim that the summons in the Magistrate's Court was served on somebody other than himself was not refuted. On the basis of the plaintiff's assertion, it was quite clear that the defendants obtained their judgment against the plaintiff in the Magistrate's Court wrongfully, if not fraudulently, because no notice of the proceedings was given to the plaintiff.

I agreed with Mr. Mooney that on the authority of the cases which he cited no action could be brought for damages against the bailiff who effected the attachment, but in my opinion the authorities do not go so far as to say that no action will lie for damages for an attachment founded on a wrongful or fraudulent judgment against the party at whose instance such attachment is issued. Had the summons in the Magistrate's Court been served on the plaintiff in this case he might have met the claim or defended the action. If a judgment was obtained against him after he had been served, he might have paid the amount of the judgment into Court and saved himself the embarrassment of having his money in the Bank attached. As the judgment was obtained against him wrongfully or perhaps even fraudulently, *prima facie* he is entitled to claim damages for the attachment founded on that wrongful judgment. It is significant that the attachment itself was subsequently withdrawn and the judgment set aside. For those reasons I dismissed the application with costs.

Application dismissed.

Solicitors: *Lovelace & Hastings*; *Skrine & Co.*

CHAN YIN TEE v. WILLIAM JACKS & CO. (MALAYA) LTD.

[F.C. (Thomson L.P., Barakbah C.J. (Malaya) and Tan Ah Tah F.J.) April 30, 1964]

[K.L. — Federal Court Civil Appeal No. 1 of 1964]

Partnership — Adult partner holding out minor as partner — Whether minor an agent — Liability of adult partner to 3rd parties — Contracts (Malay States) Ordinance, 1950, ss. 135 to 137.

Agency — Agency by estoppel — Capacity of infant to become agent — Liability of principal to 3rd parties — Contracts (Malay States) Ordinance, 1950, ss. 135 to 137.

On November 15, 1961 the appellant registered himself and one Yong, a minor, under the Registration of Businesses Ordinance as trading in partnership as general merchants under the name of Chan & Yong Trading. At about the same time the appellant and Yong wrote to the Bangkok Bank in Kuala Lumpur applying to open a current account in their names and stating they were partners of a firm and cheques of the account would be signed by both of them. Before doing any business with the respondent company, the appellant and Yong met a representative of the respondent company in a coffee shop at which the appellant held himself out to be a partner with Yong in a hardware business. On this representation business between the parties commenced.

Between December 20, 1961 to June 3, 1962 goods were supplied to Yong. The respondents sued for the price and obtained judgment against the appellant and Yong (see [1964] M.L.J. 105). On appeal by the appellant,

Held: (1) irrespective of whether Yong was the appellant's partner, the appellant had held out Yong as his agent who had authority to do things on his behalf for whose acts the appellant was liable;

(2) any person, irrespective of his competency to contract, may become an agent, for whose acts the principal may be liable to third parties.

FEDERAL COURT.

M. J. Mathew for the appellant.

L. P. Thean for the respondents.

Thomson L.P. (delivering oral judgment): This appeal arises out of a claim for the price of goods sold and delivered brought by a local firm of merchants, which is a limited liability company, against two persons named Chan Yin Tee and Yong Yit Chong, who, it was alleged, were trading in partnership under a firm name which varied from time to time. The particular manifestation of that name which appears on the writ was Chan and Yong Trading Company, but in my opinion nothing whatsoever turns on that.

It would appear that at the time the goods were sold and delivered the second defendant, that is Yong, was a few months under the age of 21 years.

We are not concerned here with what ultimately happened in the case of Yong, but in the event judgment was entered against Chan for the full amount claimed and against that judgment Chan has now appealed.

There has been a great deal of discussion both at the trial and here as to the nature and indeed the very existence of the partnership.

The relationship between the two supposed partners as between themselves is no concern of ours in these proceedings. What we are concerned with is the liability of each of the individuals concerned *vis-a-vis* third parties and, in particular the liability of Chan to third parties, in particular to the plaintiffs in this action, who were the respondents to this appeal.